

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Harold Nadeau)	
Charging Party,)	
)	
v.)	HRC Charge No. PA09-0006
)	
Kathy's Corner Store, LLC)	
d/b/a West Charleston Corner)	
Store)	
Respondents.)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

The following vote was taken on a motion to find that there are reasonable grounds to believe that Kathy's Corner Store, LLC d/b/a West Charleston Corner Store, the Respondent, illegally discriminated against Harold Nadeau, the Charging Party, in public accommodations on the basis of disability in violation of 9 V.S.A. §4502(c)(1)&(8) of the Vermont Fair Housing and Public Accommodations Act.

Joseph Benning, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Shirley Boyd-Hill	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input checked="" type="checkbox"/>	Recused <input type="checkbox"/>
Mary Marzec-Gerrion	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>


Entry: Reasonable grounds ☒ Motion failed ☐

2. Because the Human Rights Commissioners found that there are reasonable grounds to believe that Kathy's Corner Store, LLC d/b/a West Charleston Corner Store, the Respondent, illegally discriminated against Harold Nadeau, the Charging Party, in violation of the Vermont Fair Housing and Public Accommodations Act, a final attempt to resolve Charge No. PA09-0006 through settlement shall be completed by December 18, 2009.

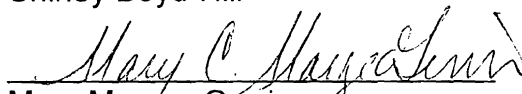
Dated at Montpelier, Vermont this 18th day of June, 2009.

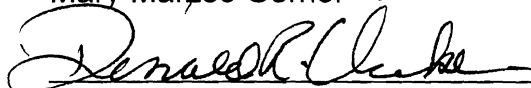
BY: HUMAN RIGHTS COMMISSION


Joseph Benning, Chair


Nathan Besio


Shirley Boyd-Hill


Mary Marzec-Gerrior


Donald Vickers

INVESTIGATIVE REPORT
HRC Case No.: PA09-0006

CHARGING PARTY: Harold Nadeau

RESPONDENT: Kathy's Corner Store, LLC d/b/a West
Charleston Corner Store

CHARGE: Public Accommodations/disability

Summary of Charge:

On January 16, 2009, Harold Nadeau filed a discrimination charge based on disability against Kathy's Corner Store. Mr. Nadeau, a wheelchair user, alleged that Kathy's Corner Store was not accessible for wheelchair users and that the owners, Kathy and Richard Lantagne, refuse to make the store accessible.

Summary of Response:

On February 9, 2009, Kathy Lantagne, an owner of Kathy's Corner Store, filed a response denying that the store is inaccessible and denying that there is an obligation to install a ramp on the front entrance of the store. Specifically, she alleges that Mr. Nadeau refuses to use a side entrance and that he also refuses to continue the arrangement he had with the previous owners whereby he would call his order, drive to the store and the owners would bring his purchases out to him. She also alleges that the store does not have the financial resources to make the store accessible.

Preliminary Recommendations:

This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that Kathy's Corner Store illegally discriminated against Harold Nadeau in violation of 9 V.S.A §4502 (c)(1)(8).

INTERVIEWS

This investigation did not include traditional one-on-one interviews. This investigator had numerous email “conversations” with both Mr. Nadeau and Ms. Lantagne. This investigation attempted to contact Ms. Lantagne numerous times by phone but was unsuccessful. Ms. Lantagne responded to some emails and letters and provided some of the documentation requested. However, she did not respond to all correspondence nor did she provide all the requested documentation.¹

5/14/09 – Jack Rogers, peer advocate at Vermont Center for Independent Living

DOCUMENTS

4/08 – 12/08 – Informal HRC investigation contact log – Appendix A
1/16/09 – Charge of Discrimination
2/9/09 – Response to Discrimination Charge
2/25/09 – Pictures of Kathy’s Corner Store – Appendix B
2/27/09 – Remodeling/repairs invoices for Kathy’s Corner Store –
9/13/07 – 10/11/07
4/21/09 – Copies of Bank statements for Kathy’s Corner Store -
10/18/07 through 9/18/08
2/9/09 – Various emails with Ms. Lantagne - 2/9/09 through 4/9/09

ELEMENTS OF PROOF

In order to establish a prima facie case for his charge of discrimination in a public accommodation, Mr. Nadeau must show that:

- He is a member of a protected class (disability)
- The respondent owns, leases, or operates a place of public accommodation

¹ This investigation explained to Ms. Lantagne that if the store’s reason for not making their store accessible was lack of financial means to do the work, she needed to provide documents that would prove her claim to this investigation. She provided only some of the specifically requested documents and made no attempt to explain the store’s financial situation or offer additional information to support her defense.

- The respondent discriminated against the charging party within the meaning of the ADA

FACTS

Background Regarding an Attempt at an Informal Resolution

Beginning April 25, 2008, Human Rights Investigator Paul Erlbaum attempted to reach an informal resolve to this case. The extensive log of those efforts is attached to this report in Appendix A.² The Vermont Human Rights Commission's (HRC) attempt to reach an informal resolution to this case included several promises from Ms. Lantagne to consult builders and/or other professionals regarding alterations needed to make the store more accessible and to provide HRC with a copy of a plan based on her consultations. Ms. Lantagne never provided a plan or committed to taking steps to make the store accessible. Mr. Erlbaum's final contact with Ms. Lantagne occurred on December 9, 2008. On January 16, 2009, after numerous delays, excuses and unsuccessful attempts to reach an informal resolution Mr. Nadeau signed a formal HRC charge of discrimination.

Undisputed Facts

West Charleston Corner Store (a/k/a Kathy's Corner Store) was purchased by Richard and Kathy Lantagne on October 10, 2007. This small general store, located in West Charleston, Vermont, was built in the 1920's. The store is not accessible to persons who use a wheelchair. In October 2007, when Mr. Nadeau noticed repairs were being done on the store he stopped and explained to a woman working outside, the need to make the store accessible. On or about that date

² Because the log is very extensive this investigative report does not include a restatement of these events within the body of this report. The document is important and should be read in its entirety. Specific events referenced in this report have been highlighted.

the Lantagnes became aware of the possibility that they needed to make their store accessible to persons who use a wheelchair. They were again informed of this possibility during the course of Mr. Erlbaum's informal investigation.

Investigation's Store Visit – pictures in appendix B

On February 25, 2009 this investigation visited Kathy's Corner Store to assess the store's accessibility. This investigation found that there are two entrances to the store. As of the date of the site visit, neither entrance was accessible for a wheelchair user. The front door is 36" wide; however the only way to access this entrance is by ascending three steps. A side door, which is also 36" wide, opens to the store's kitchen area. A user of this side entrance would enter the store by going through the kitchen. This side/kitchen entrance is also not accessible because:

- the threshold has a lip on both sides of the door which is over ¼" high and would need to be beveled,
- the door handle is a knob rather than a push handle,
- there is no stable, firm path from the parking area (there is no designated accessible parking space) to the door, and any such a path would need to be maintained when there is inclement weather,
- there is no signage to indicate that the side/kitchen entrance is accessible and available for customers' use,
- there is a counter corner that protrudes into the travel path from the kitchen to store that may or may not need to be removed in order to make the path wide enough for a wheelchair user.

Statements

Harold Nadeau

Mr. Nadeau lives in West Charleston, Vermont. He is a wheelchair user. He had asked the previous owners of Kathy's Corner Store (then West Charleston Corner Store) to make the store accessible but they refused.³ The previous owners offered to have Mr. Nadeau call the store with his order and they would then bring his order out to his car when he arrived. Mr. Nadeau stated that he this did not work very well as he would arrive and the owners would be too busy or would have forgotten that he had called; consequently he had to send a verbal message into the store with a customer and then wait while the store employee gathered his order. Additionally, he wants to be able to shop in the store like the rest of the general public.

Mr. Nadeau stated that in the fall of 2008, when he noticed work being done on the front steps of the store he stopped and spoke to the woman who was painting. He asked if a ramp was being installed. She stated that she did not know. Mr. Nadeau then asked the person who was painting to give the owners the message that they needed to install a ramp.

On May 5, 2008 Mr. Nadeau offered to provide free guidance to the Lantagnes regarding some inexpensive ways to install a ramp. He believed the ramp would only have to be 12 feet long and would cost about \$1000. Mr. Erlbaum conveyed this information and offer to Ms. Lantagne. At this time, Ms. Lantagne did not respond to Mr. Nadeau's offer. Mr. Nadeau again offered his services on May 21, 2008. On June 4, 2008 Mr. Erlbaum reached Ms. Lantagne and she stated that

³ At that time he believed that because the building was an older building there was no requirement to make the building accessible (he has since learned otherwise).

they were meeting with a contractor the next day to help draw up plans.⁴

On June 23, 2008, Ms. Lantagne agreed to have Mr. Nadeau stop by and discuss the accessibility issues with her. However, it took until August 5, 2008 for this meeting to occur. When Mr. Nadeau arrived Ms. Lantagne was not there but her husband was. Mr. Nadeau characterized Mr. Lantagne's attitude as unreceptive and even rude. Mr. Nadeau offered an opinion on a possible location and direction for a ramp. Mr. Lantagne rejected those ideas because the ramp would interfere with his new air-conditioning system.⁵ Mr. Nadeau then suggested using the side entrance as an accessible entrance, explaining some of the changes that would need to be made to make it accessible. Mr. Lantagne rejected that idea too. Mr. Nadeau characterized Mr. Lantagne as being noncommittal about making the store accessible and reported that nothing happened as a result of the meeting.

Mr. Nadeau estimated an ADA fully compliant ramp would cost up to \$3500. He based this opinion on his conversation with a local contractor he knows.

Kathy Lantagne

Ms. Lantagne and her husband own Kathy's Corner Store but they also are employed in other jobs. Ms. Lantagne stated that they did not "remodel" the store. She stated that they did repair and maintenance work when they first purchased it. The specific work included replacing rotting wood on the porch and rails, deep cleaning the interior of the store, adding granite counter tops, adding a 3-bay sink and a hand washing sink to the kitchen, painting the interior,

⁴ The Lantagnes never provided any results of that meeting to Mr. Nadeau or HRC.

⁵ Ms. Lantagne did not include invoices for air-conditioning in the repair/remodeling receipts this investigation requested.

refinishing hardwood floors, replacing some flooring and moving some original shelving. When this investigation reviewed her the receipts for materials the store purchased, Ms. Lantagne identified receipts for a commercial sprayer they installed in the sink, for pine boards used on the store walls, and for materials used to replace the steps leading up to the porch. Ms. Lantagne told this investigation that they put a lot of sweat equity into fixing up the store; and that friends and relatives helped with cleaning and painting. She stated that they still have a couple of leaks and a back wall in the kitchen that needs repair but that they are unable to afford to do this work at this time.

This investigation examined numerous receipts that Ms. Lantagne provided for the work done on the store. Most of the receipts, approximately \$3500, appear to be for work that would be characterized as maintenance and repair work. Some of the receipts, approximately \$4000 were for remodeling work in the kitchen area.⁶

Ms. Lantagne stated that after Mr. Nadeau informed them of the need to install a ramp that she checked this out by calling the Vermont State Fish & Wildlife Department, the Vermont State Liquor Board, the Vermont State Lottery Commission and the licensing department with the Food and Nutrition office and was told it was necessary to install a ramp.⁷ On May 5, 2008, Mr. Erlbaum emailed Ms. Lantagne several pages of the American with Disabilities Act Technical Assistance Manual. This information explains the measures a public accommodation (such as stores) needs to take to make their place of business accessible.

Ms. Lantagne explained that the store has an entrance with a buzzer that Mr. Nadeau refuses to use and that he also refuses to

⁶ Because Ms. Lantagne did not specify which receipts applied to what work this investigation had to make these determinations to the best of its ability.

⁷ This investigation is not sure why she contacted these State offices about accessibility issues.

continue the same arrangement he had with the previous owners, whereby he would call in his order and they would bring it out to him.⁸

This investigation asked Ms. Lantagne for the store's financial records that would support her position that they have not had the financial resources to take steps toward making their store more accessible. This investigation specifically requested that Ms. Lantagne provide all bank statements for the store from the time it opened to the present and the check register for those months so this investigation could review the types of expenses the store incurred. Ms. Lantagne only provided statements for October 2007 – September 2008. She did not provide the check registers or any other accounting/explanation of the store's expenses.

A summary of the store's bank statements for October 2007 – September 2008 showed the following financial information:

- The starting balance in 10/07 was \$29,631.00
- The monthly starting balances in the store's bank account ranged from \$7373 to \$1093
- The average monthly starting balance was \$4165 (excluding the first month's starting balance of \$29,631)

Ms. Lantagne told Mr. Erlbaum that a ramp could cost as much as \$50,000. However, she did not produce documentation to support this estimate.

Jack Rogers

This investigation asked Mr. Rogers if he had visited Kathy's Corner Store to discuss the issues of accessibility. He stated that Mr. Nadeau had asked him to stop by the store and he did sometime last

⁸ During the attempt to informally resolve this charge Ms. Lantagne made several references to using the back/kitchen entrance as an accessible entrance. However, she never made a formal commitment or took steps to make that entrance accessible.

summer. He stated it was a brief, unofficial visit. The purpose was “to make the owners aware of the need to make the store accessible.” He said he spoke to a woman, but that he did not know if she was Kathy Lantagne or a store employee. He recalled that the woman was not very interested in what he was saying. He did not follow upon this issue.

ANALYSIS

V.S.A. 9 § 4502 Public Accommodations

(c) No individual with a disability **shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits or accommodations**, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

(1) A public accommodation shall provide an individual with a disability **the opportunity to participate in its services, facilities, privileges, advantages, benefits and accommodations. It is discriminatory to offer an individual an unequal opportunity or separate benefit; however it is permissible to provide a separate benefit if that benefit is necessary to provide an individual or class of individuals an opportunity that is as effective as that provided to others.**

(8) Notwithstanding the provisions of this section, if a place of public accommodation **has an architectural or communication barrier, in order to comply with this section, the public accommodation shall remove the barrier, if removal is readily achievable, or shall make its goods, services, facilities, privileges, advantages or accommodations available through alternative methods, if those alternative methods are readily achievable. Nothing in this subsection shall be construed to alter architectural barrier removal requirements under the federal Americans with Disabilities Act and its regulations as they relate to governmental entities.** (Emphasis added.)

Prima Facie Elements

A plaintiff must establish a prima facie case of discrimination by a preponderance of the evidence. Dobson v. Central Carolina Bank and Trust Co., 240 F.Supp.2d (M.D.N.C. 2003). In order to make out a prima facie case of public accommodation discrimination, the Charging Party must show the following:

- He is a member of a protected class (disability)
- The respondent owns, leases, or operates a place of public accommodation
- The respondent discriminated against the charging party within the meaning of the ADA⁹

The legislative intent of the Vermont Fair Housing and Public Accommodations law (VFHPA) states that the provisions of VFHPA “are intended to be implemented and construed so as to be consistent with the Americans with Disabilities Act (ADA).” 9 V.S.A. §4500(a).

Discussion of the Elements

Whether Mr. Nadeau is a member of a protected class

Mr. Nadeau is a wheelchair user. Therefore, he is a member of the protected class, a person with a disability.

Whether the respondent owns, leases or operates a place of public accommodation

Vermont FHPA defines a “place of public accommodation” to mean “any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.” 9 V.S.A. §4501(1).

⁹ Roberts v. Royal Atlantic Corp., 542 F.3d 363, 368, (2d Cir. 2008).

Kathy and Richard Lantagne purchased the West Charleston Corner Store (a/k/a Kathy's Corner Store) on October 10, 2007. A store is a place of public accommodation.

Whether the respondent discriminated against the Mr. Nadeau within the meaning of the ADA

When a public accommodation is not accessible, as is the case at Kathy's Corner Store, the ADA provides two theories by which the owner of that public accommodation can be found to have discriminated against a person with a disability. The first is triggered when an owner of a public accommodation makes "alterations" to the establishment in a manner that affects the usability of the establishment. 42 U.S.C. §12183(a)(2). The second is triggered if a public accommodation's owner fails "to remove architectural barriers . . . in existing facilities . . . where such removal is **readily achievable**." 42 U.S.C. §12182(b)(2)(A)(iv) (emphasis added).

Alterations Theory

When an establishment undertakes "an **alteration** that affects . . . usability of or access to an area of the facility **containing a primary function**, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area . . . [is] **readily accessible** to . . . individuals with disabilities . . . [and] not disproportionate to the overall alterations in terms of cost and scope (as determined by the Attorney General)." 42 U.S.C. §12183(a)(2) (Emphasis added). An analysis of whether or not the Lantagnes discriminated against Mr. Nadeau by not providing a barrier free path of travel into their store, after making improvements to their store, requires answering these questions:

- 1) Whether the work done at Kathy's Corner Store was the type of work that qualifies as an "alteration" under the ADA: and,
- 2) Whether under the ADA the costs of making the travel path accessible are disproportionate to the overall costs of the alterations. (Emphasis added.)

The ADA does not contain a formal definition of "alteration." However, the Department of Justice's implementing regulations define "alteration" as "a change to a place of public accommodation . . . that affects or could affect the usability of the . . . facility or any part thereof." The regulations further state that,

Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic preservation, changes or rearrangement in the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions.

Normal maintenance, reroofing, painting or wallpapering, asbestos removal or changes to mechanical and electric systems are not alterations unless they affect the usability of the building.

28 C.F.R. §36.402 (2)(b)(1).

Some of the receipts/invoices provided by Ms. Lantagne indicate that many of the expenditures for work done on the store were for normal maintenance (which had apparently been ignored prior to their purchase of the store). These types of expenditures included painting, sanding and refinishing a floor, replacing rotted boards and rails on the porch, replacing three steps and putting new pine paneling inside the store. The nature of these repairs appeared to this investigation to be of the normal maintenance type and therefore do not qualify as "alterations" under the ADA.

There were additional more extensive repairs, such as putting in granite counter tops, installing a new sink and other

remodeling done to the kitchen area. The kitchen is a separate room from the public commercial area of the store. These changes appear to go beyond “normal maintenance.” However, these activities would only be counted as “alterations” for ADA purposes if they “affect or could affect the usability of or access to an area of the facility that contains a **primary function** of the facility.” 28 C.F.R. §36.403(a) (emphasis added).

A “primary function” as defined in the ADA regulations is “a major activity for which the facility is intended. Areas that include a primary function include, but are not limited to . . . the dining area of a cafeteria . . .” Id. at (b). This example, used to help illustrate what constitutes a “primary function,” clearly distinguishes between the place where patrons gather to eat/purchase food and the place where the food is prepared. At Kathy’s Corner Store customers come to purchase food in the commercial portion of the store, the store’s kitchen is only used by employees to prepare food for purchase in the store. Therefore, the changes made to the store’s kitchen also do not appear to meet the definition of an alternation as it is used in the ADA.¹⁰

This investigation does not believe that there is sufficient evidence to find that Kathy’s Corner Store discriminated against Mr. Nadeau under this theory of discrimination.

¹⁰ If these alterations had been made to a primary function area of the store, then the owner would have had to remove barriers in the path of travel serving that area. The ADA regulations state that owners of the public accommodation have to spend up to 20% of the cost of qualifying alterations to improve the path of travel to the maximum extent feasible into the store. Improvement of accessibility includes first the path of travel to the area but then access to public restrooms, telephones, and drinking fountains. C.F.R. 36.403(f)(1).

Readily Achievable Theory

Under the ADA the removal of barriers in places of public accommodation is also required when the removal of the barrier is “readily achievable” whether a facility is new or old or altered. “Readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” 28 C.F.R. 36.104. In determining whether a barrier removal is “readily achievable” the nature and cost of the action is to be considered. Id. When considering whether the removal of an architectural barrier is “readily achievable” the burden of proof required of each party in the case is an issue to be considered. See Roberts v. Royal Atlantic Corp. 542 F.3d 363, 373 (2d Cir. 2008) (Concluding that a charging party needs only to articulate a plausible proposal for barrier removal and not a detailed or exact proposal).

On May 5, 2008, Mr. Nadeau offered to consult with the Lantagnes about affordable ways to make the store accessible. He also told Mr. Erlbaum that he believed a ramp could be built for about \$1000.¹¹ He offered to meet with the Lantagnes to discuss how to make the store accessible. Mr. Erlbaum passed this information along to Ms. Lantagne. On June 23, 2008, the Lantagnes accepted the offer to consult with Mr. Nadeau. However, Mr. Nadeau and Mr. Lantagne did not actually met until August 8, 2008. Mr. Nadeau stated that when he met with Mr. Lantagne to discuss making the store accessible, Mr. Lantagne was unreceptive and even rude.

Because Mr. Lantagne was uninterested in installing a ramp, Mr. Nadeau spoke with him about using the kitchen/side

¹¹ Mr. Nadeau later told this investigator that he thought a ramp that was fully ADA compliant would cost up to \$3500.

door as an accessible route. Mr. Lantagne was not open to that idea either. The Lantagnes never followed through with any of Mr. Nadeau's suggestions.

Mr. Erlbaum again made several attempts to contact Ms. Lantagne. Finally, on September 26, 2008 he made contact with Ms. Lantagne and she told Mr. Erlbaum that within a week she would provide a schedule of improvements that she intended to make. Instead of providing a list of improvements she sent an email that basically stated that they did not have the financial resources to make any changes and that Mr. Nadeau could use the kitchen entrance at any time. However, this entrance was not accessible and Ms. Lantagne did not address this issue.

During the course of Mr. Erlbaum's attempts to resolve this situation Ms. Lantagne stated that they were either consulting a contractor about removing architectural barriers, willing to consult with Mr. Nadeau and willing to make changes such as allowing the side door to be used, in order to make their store accessible. However, these statements never resulted in any actual changes to improve the accessibility to their store. The Lantagnes never provided plans or a specific estimate, except to say they thought a ramp could cost up to \$50,000.

In determining the criteria for whether a removal of a barrier is "readily achievable", the court stated that the concept is a broad one and that either party may include both monetary and non-monetary considerations as part of the analysis. See Roberts at 373. The Lantagnes must present evidence to show that removal of the architectural barriers is not "readily

achievable” because of their financial situation.¹² The financial information provided to this investigation was minimal and only covered the first year that the Lantagnes owned the store. It showed that:

- The starting balance in the store’s account in October 2007 was \$29,631.00
- The monthly starting balances in the store’s bank account ranged from \$7373 to \$1093
- The average monthly starting balance was \$4165 (excluding the first month’s starting balance of \$29,631)

Based on the financial information provided by the Lantagnes, this investigation believes that there is credible evidence that during the first year of business Kathy’s Corner Store had the financial means to take steps toward making the store more accessible. Absent evidence to the contrary, this investigation believes that Kathy’s Corner Store had financial and other resources, including sweat equity, available to make the store more accessible from October 2008 to the present.

This investigation determined that Kathy’s Corner Store is not accessible for wheelchair users. This investigation does not believe that the store’s offer to bring items out to Mr. Nadeau fulfills their requirements under the ADA or Vermont’s Public Accommodation Law (9 V.S.A. §4502 (C)(1)(8) – pg. 9 of this report bolded portions). Additionally, the Lantagnes offer to use the side door entrance as an alternative to removing the architectural barriers to the front/main entrance does provide an accessible entrance to Mr. Nadeau, absent making accessibility improvements to it.

¹² This investigation requested specific information regarding Kathy’s Corner Store’s finances and only received a portion of the material requested. This investigation made it clear to Ms. Lantagne that not having the financial ability to make the store more accessible was their defense. Therefore, they needed to provide information that supported their claim. There was little or no effort by the respondents to support their defense.

Preliminary Recommendation: This investigative report makes a preliminary recommendation that the Human Rights Commission find there are **reasonable grounds** to believe that Kathy's Corner Store discriminated against Harold Nadeau because of his disability in violation of V.S.A. 9 § 4502 (c)(1)(8).

Ellen Maxon, Investigator

Date

Robert Appel, Executive Director

APPENDIX A

Contact Log

Bolded/italicized portions are referred to in the main body of the investigative report

Harold Nadeau (HN) v W. Charleston Corner Store – Kathy Lantagne (KL)

tc = telephone call

= **May 5, 2008** tc to KL of Charleston store 334-3916 . . . She says that the store building is 150 years old. She paid \$10,000 to \$15,000 for work on the store. Much of the labor was provided by her family. The work done:

- > replacing rotting wood on the porch railing and floors
- > cleaning the interior
- > adding granite counter tops
- > adding a 3-bay sink and a hand washing sink in the kitchen
- > painted interior
- > Refinished some old hardwood flooring and replaced some other flooring.
- > Some moving of original shelving

She believes installing a ramp would be very expensive (possibly \$50,000) and would require extensive grounds work, and alterations to the porch and the doorways.

She is willing to accommodate a person in a wheelchair by bringing them in the side kitchen entrance, although the person might have difficulty moving the wheelchair beyond the kitchen given the arrangement of the shelving.

= **May 5, 2008** tc from HN ... He asserts that the store should have spent a percentage of their renovations money on accessibility. ***He believes that an effective ramp could be installed for less than \$1000 and that it need not be more than 12 feet in length and without a switchback by aiming the ramp at the side of the building.*** He believes the existing doorway is adequate and that the aisles, if they meet fire code (which he says requires 36") is adequate for wheelchair access.

HN would, for free, provide some guidance based on his engineering background.

= May 5, 2008 tc to KL of Charleston store 334-3916 ... I explain my ADA research findings about the 20% rule and I relay HN's thoughts that the ramp installation need not be very expensive and ***that he would be willing to consult.*** I agree to send along a synopsis of my research findings. She may wish to hire an atty.

= **May 5, 2008** email to KL

Dear Ms. Lantagne,

Please find below some of the gleanings from my ADA research regarding alterations to public accommodations. Should you decide that you wish to speak with Mr. Nadeau, I will be glad to provide you with his contact information.

With best regards, Paul Erlbaum

<http://www.ada.gov/taman3.html>

Americans with Disabilities Act
ADA Title III Technical Assistance Manual
Covering Public Accommodations and Commercial Facilities

(Content of the ADA Technical Assistance Manual was deleted from this appendix but included in email to KL.)

= **May 20, 2008** tc message from HN ... please call back with status to work

= **May 20, 2008** tc to KL of Charleston store... tc message says KL will return on June 2.

= **May 20, 2008** tc to KL at the W. Charleston store... Woman answering suggests calling back at 4:00

= **May 20, 2008** tc to KL at the W. Charleston store...
We agree to speak in a couple of days

= **May 20, 2008** tc message to HN at his work # 229-6412 ... relayed status

= **May 21, 2008** tc from HN ... ***He is still willing to consult with the owner of the store about ways to make it accessible inexpensively.***
He would like to either be engaged in a resolution or be, filing a charge by June 17.

= **May 29, 2008** tc to KL at the W. Charleston store... Man's voice says she should return this afternoon.

= **May 29, 2008** tc to KL at the W. Charleston store... Woman's voice says she should return by 7:30 this evening.

= **June 4, 2008** tc to KL at the W. Charleston store... She will call me back in 10 minutes.

= **June 4, 2008** tc w KL ... ***Tomorrow they have a contractor coming to help draw up plans.*** I state that it may be wise to be sure the contractor is well-versed in ADA and ADAAG, possibly working in tandem with an architect. We will speak again in about a week.

= **June 4, 2008** tc message to HN at his work, relayed status

= **June 17, 2008** tc to KL at Charleston store... left message asking for call back

= **June 18, 2008** tc to KL of Charleston store... left message asking for call back

= **June 23, 2008** tc to KL of Charleston store. The store suffered a break-in and there was both loss of merchandise and damage to the entryway ... Her attention has been on managing the losses resulting from the break-in. ***She agrees to have me relay to Mr. Nadeau an invitation to call her to arrange a time for him to look at the entryway and to suggest access alterations.*** She asks that I provide him with the store # and inform him that she can be reached there in the morning between 5:00 and 7:15 and in the evenings from 5 to 9.

= **June 23, 2008** tc to HN at his work I relay KL's invitation ... He will call her at the store # during the range of hours she specified in hopes of getting together to consult about access to the store.

= **July 2, 2008** tc to HN at his work # ***He has been unsuccessful in her attempts to reach KL*** – He will keep trying.

= **July 11, 2008** tc to HN at his work # Left message asking for call back

= **July 17, 2008** tc to HN at his work # Left message asking for call back

= **August 5, 2008** tc from HN ... He says: ***He has had a hard time linking up with K L***, but last night he got through by phone when he was in the vicinity. She seemed receptive on the phone and he said he was on his way. ***When he arrived at the store, HN was met by Kathy's husband who was not receptive and was actually rude. HN pointed out various options to make the store accessible, including some temporary measures. Kathy's husband was non-committal but said he would relay the info to Kathy.*** HN will write it all up and get it to me next week. I say I will call Kathy in a few days, after she has had a chance to think about it.

= **August 18, 2008** tc to KL of Charleston store KL says it is not a good time to talk. I say I will call again soon.

= **August 20, 2008** tc to KL of Charleston store KL says she and her husband are still trying to figure out what to do. She invites advice, to which I respond that I cannot advise her, but would urge her to get pro-active about researching what, if anything, is out of compliance at the store and taking steps to remedy anything out of compliance. I point KL to ADAAG

which she says she will consult on the internet. I say I will check back in two weeks.

= **September 16, 2008** tc to KL at the W. Charleston store 895-2500 ...
Person answering says KL is gone until next week

= **September 23, 2008** tc to KL of Charleston store 334-3916 ... left
message asking for call back

= **September 24, 2008** email from HN:
Paul would you let me know where my concerns over the West Charleston
Corner Store have gone?

= **September 24, 2008** email to HN:
Dear Mr. Nadeau,

Thanks for your e-mail. I spoke with Kathy Lantagne on August 20 at
which time she said she and her husband are still trying to figure out what to
do. I urged her to research what, if anything, is out of compliance with ADA
at the store and to take steps to remedy anything out of compliance. I
called her again on September 16 and learned she was on vacation. I called
yesterday and left a message asking that she call me back. I am currently
awaiting her return call.

That said, what are you thinking? Are you still okay trying to work this
out informally? If yes, do you want to set a time after which you will request
that HRC's executive director Rob Appel accept your case for investigation?

Best regards, Paul Erlbaum

= **September 24, 2008** email from HN:
I'm done playing. I will be in Boston from 10/01-10/3 if nothing changes
between now and 10/06/2008 I would like to proceed with a formal
complaint.

= **September 24, 2008** email from HN:
And by changes I mean an in writing commitment to address accessibility
with time line.

= **September 24, 2008** email to HN:
I will relay your thoughts to Ms. Lantagne. If there is no written commitment
to fixes by 10/6, I will relay your request to Rob Appel.

Best, Paul Erlbaum

= **September 24, 2008** email from HN:
Thank you

= **September 24, 2008** tc to KL left message asking for call back and saying that HN has indicated that if there is no written commitment to have the store come into compliance with ADA by 10/6, he will request of Rob Appel that he accept a Charge of Discrimination.

= **September 25, 2008** tc message from KL saying right now she does not have the money to put into improvements

= **September 26, 2008** tc to KL of Charleston store 334-3916 ... ***within a week she will send me a schedule of improvements she intends to make to the store.***

= **October 6, 2008** tc from KL ... She asks for my e-mail address and says I should get her e-mail shortly.

= **October 6, 2008 email from KL:**

Re: Store Entrance at the West Charleston Corner Store

I will start with saying that my husband & I purchased the local general store last year before the economy went completely sour. We did some renovations and made some changes as far as the replacing rotten boards and replacing the steps, but we did not however change any of the current entrances. I have been discussing the issue with Mr. Erlbaum since a complaint was filed from Mr. Nadow. Apparently Mr. Nadow was patrons of the store in the past--he used to call and have the store owners bring items outside for him. He has never called us for any items or services until he came to store to help educate us on the doorway. We do have a side door that could be accessed at any point throughout the day. We do not have any resources to make any further changes to the structure. I would like that if this is a state requirement that lenders be educated on this fact. I called the state department when we were fixing the porch and we were told nothing about any upgrades necessary.

I am not being non-complaint on this request--we just do not have any additional funds to make any changes. We also severely need a security system, as we were robbed in June and lost \$1,000 in product. Mr. Nadow stated to my husband that if we felt we were going to stay open we should consider putting in a ramp. I am not sure what the issue is, but feel that Mr. Nadow is using his knowledge as a power source--it would have been neighborly to discuss these issues in the first place. I am not excluding anyone from my establishment the building has been a store since the 1950's, I wonder why we are the first to see this complaint???? The previous owners, Jim & Sharon White can not believe that there is a complaint. Please let us know what we can do to rectify the situation as painless for all parties as possible.

***Respectfully,
Kathy J Lantagne***

= **October 6, 2008** email to KL:
Got it. As promised, I will relay this to Harold Nadeau.

= **October 6, 2008** email to Harold Nadeau:
Dear Mr. Nadeau,

In late September, I spoke with Kathy Lantagne of the West Charleston Corner Store. At that time she said that she simply did not have any cash to put toward renovations of the store. She expressed frustration that no one had informed her at the time she purchased the store that there were detailed ADA regulations she would be required to follow. She stated, however, that she would consider taking incremental steps toward accessibility as she could afford them. I asked her to put her thoughts into writing. I received an e-mail from Ms. Lantagne today and will paste the text of her e-mail below.

I look forward to your reaction to Kathy Lantagne's e-mail.
With best regards, Paul Erlbaum

= October 7, 2008 email from HN:
First, I complained to the original owners (Jim and Sharon White) and at the time I mistakenly thought there was some kind of grandfather clause that would exclude them from complying with the ADA. Second, I attempted to educate Kathy Lantagne on the ADA requirement and was rebuffed. This occurred during there renovations before the store was open. Last, when I spoke to Mr. Lantagne I suggested they consider modifying the side entrance to be ADA compliant including proper signage and that the door would have to be unlocked. His demeanor and comments did not lead me to believe they would use that option. Further whether or not I frequent the store or not is not the point. Although if they were accessible I believe I would if there attitude were not as hostile as Mr. Lantagne displayed.

I am formally requesting that the Human Rights Commission pursue enforcement of the ADA requirements. Please let me know if and when this might occur.

= **October 7, 2008** email to HN:
Dear Mr. Nadeau,

I will forward the recent e-mails from you and Ms. Lantagne to Robert Appel for him to make a case acceptance decision.

Best regards, Paul Erlbaum

= **October 27, 2008** tc to KL message says she will be working out of town until Wednesday.

= **October 27, 2008** tc to KL She will be back after 6:00

= **October 28, 2008** tc to HN I tell him that I plan to continue my attempt at informal resolution but more directly between me and KL, but that if that fails we may take his charge. HN says that the store has recently installed air conditioning and plans to install an alarm system. HN continues to believe that there is an inexpensive fix to access via the side door, that a very short ramp would suffice, although he is unsure the doorway is wide enough to meet ADAAG requirements.

= **October 30, 2008** tc to KL I state that Robert Appel is willing to put HN's charge on hold if she is willing to conduct an assessment of accessibility using ADAAG as a guide and committing to readily achievable accessibility alterations. She will get back to me by November 7 with an answer. Also, I provide her the following info from Arthur Hamlin re possible sources of low interest loans: Vermont Community Loan Fund 223-1448; Northeastern Vermont Development Association, 748-5181 ; The town where the business is located may have a local revolving loan fund from previous community development block grants, many towns have such small funds

= **November 12, 2008** tc to KL ... left message recapping our 10/30 conversation and requesting a prompt call back

= **November 14, 2008** tc to KL. left message asking for a call back today

= **November 14, 2008** email from KL:
Hi Paul

Sorry I am late with your request--we are looking into a contractor giving us an estimate. It is Sancille Construction--he should have an estimate by the end of next week. We are working on complying--or do you have someone in mind that can come out and look over whether or not--it is necessary.
Kathy J Lantagne

= **November 14, 2008** email to KL at Kathy.Lantagne@ahs.state.vt.us :
Dear Ms. Lantagne,

Many thanks for your e-mail. I will ask the executive director of the Human Rights Commission to keep the Charge of Discrimination on hold so long as you are making good faith efforts to figure out whether any features of your store are in violation of the Americans with Disabilities Act regulations, and if so, what you can do to correct those features. Please notify me soon with your findings and plans.

Unfortunately, I am not positioned to recommend anyone to advise you in this matter. A licensed architect may be able to provide you with that

advice or direct you to someone who can do so. Also, you will want to have ready access to the technical guidance contained in the Americans with Disabilities Act Accessibility Guidelines (ADAAG). ADAAG is available on-line at : www.access-board.gov/adaag/html/adaag.htm

Best regards, Paul Erlbaum

= **November 24, 2008** email to KL at Kathy.Lantagne@ahs.state.vt.us :
Dear Ms. Lantagne,

Please keep me informed of the progress of your efforts to determine whether any features of your store are in violation of the ADA.

With best regards, Paul Erlbaum

= **December 1, 2008** pertinent portion of email from HN:
Please let me know what the current status of my complaint regarding the West Charleston Corner Store is.

= **December 3, 2008** email from HN:
Please let me know what I need to do to file a formal complaint as I thought I already had!

Harold Nadeau

= **December 3, 2008** email to HN explain formal complaint process

= **December 3, 2008** tc to KL... left message asking for a call back to give me a status report

= **December 9, 2008** email to KL:
Dear Ms. Lantagne,

I have been directed by the executive director of the Human Rights Commission, Robert Appel, to inform you that he will allow you until January 2, 2009, to submit an assessment of the accessibility of the West Charleston Corner Store based on the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Unless you determine that the store is in full compliance, your submission should also include a description of your plans to take readily achievable measures to reach compliance by March 2, 2009. Mr. Appel has stated that your failure to provide such an assessment and plan by January 2 will result in the end of the Human Rights Commission's attempt to resolve this matter informally, triggering an investigation. I hope you will take this final opportunity to resolve this matter informally.
With best regards, Paul Erlbaum

= **December 9, 2008** tc to KL ... left message asking that she read the e-mail I just sent to her and briefly relaying the gist of the e-mail.